IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 02.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Appeal Nos.382 and 383 of 2004
and
W.A.M.P. Nos.658/04 & 888/06

1. The Director-General of
National Power Training Institute,
NPTI Complex,
Sector 23,
Faridabad, Haryana 121 003.

2. The Executive Director,
National Power Training Institute,
Regional Power Training Institute,
Block 14/21,
Neyveli 607 803. ... Appellants in both Writ Appeals/Respondents

vs.

S.Padmavathi ... Respondent in both Writ Appeals/Petitioner

Appeals under Clause 15 of the Letters Patent against the common order of the learned single Judge, dated 22.01.2004, made in WP Nos.14057 of 1997 and 6226 of 1998 presented to this Court under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondents relating to the

1.proceedings of the 2nd respondent in proceedings no.RPTI/NEY/ADM/SP/97/3437 dated 8.9.97 which has been passed pursuant to the order of the 1st respondent in proceedings no.4(A)/ 169/96/NPTI/HQ/2841 dated 26.8.97 ans quash the same.

2.Order of the 1st respondent in No.4(A)/169/96 - NPT1/HQ/150 dated 21/22.4.1998 and the respondent in No.RPTI/NEY/ADM/SP/320 dated 23.4.1998 and quash the same respectively.

For Appellants : Mr.V.T.Gopalan,
Senior Counsel for Mrs.Radhagopalan.

For Respondent : Mr.T.Gowthaman

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

COMMON JUDGMENT

P. SATHASIVAM, J.

The Director General of National Power Training Institute, Faridabad, Haryana, and the Executive Director, National Power Training Institute, Regional Power Training Institute, Neyveli, aggrieved by the Common Order of the learned Single Judge, dated 22.01.2004, made in W.P. Nos.14057 of 1997 and 6226 of 1998, preferred the above Writ Appeals.

2. The respondent herein is the petitioner in both the Writ Petitions. According to her, she belongs to Scheduled Caste and was selected as Assistant Director (Technical Faculty) by proceedings, dated 08.04.1996, of the Director General, National Power Training Institute (shortly called NPTI), Haryana. She completed her probation period of one year on 22.04.1997 itself. While so, the Director General, NPTI, passed an order, terminating her service by proceedings dated 26.08.1997. Pursuant to the above said Order, the Executive Director, NPTI, Neyveli, by order dated 08.09.1997, terminated her from service with retrospective effect from 26.08.1997. According to her, both the orders are illegal and arbitrary. It is also stated that, at the instigation and false report of the second respondent, the order of termination was passed without giving her any opportunity by wrongly invoking proviso to sub-Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as 'Rules'). Questioning the said orders, the petitioner preferred W.P. No.14057 of 1997.

3. In the above mentioned Writ Petition, she also prayed for stay in WMP No.22557 of 1997. By order dated 12.09.1997, the learned Judge granted interim stay for four weeks. Again, the same was extended by four weeks on 30.09.1997; by another three weeks on 05.11.1997; and thereafter, stay was not extended. On 17.04.1998, when WMP No.22557 of 1997 came up for hearing, after noting that the interim stay granted on 05.11.1997 was not extended thereafter, no order extending the stay was passed. Taking note of the said aspect, viz., interim stay was not extended, communication, dated 21/22.04.1998, was sent by the first respondent, intimating that the respondent/petitioner should not be allowed to attend the office. The same had been communicated to her by the second respondent, vide letter dated 23.04.1998. Both the orders were challenged by her in W.P.No.6226 of 1998.

4. Detailed counter affidavit was filed by the Executive Director, Regional Power Training Institute, Neyveli, in WP No.14057 of 1997, highlighting their stand. Though several details have been furnished, the relevant information is that, since the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondent/petitioner was in temporary service, by invoking proviso to sub-Rule(1) of Rule 5 of the Rules, her service was terminated forthwith. By the communication, the petitioner was informed that she is entitled to claim a sum equivalent to the amount of her pay and allowances for the period of notice at the same rates at which she was drawing immediately before the termination of her service.

5. The learned Single Judge, taking note of proviso to Rule 5(1) of the Rules; and after finding that the action on the part of the respondents/appellants herein is not in accordance with the said Rule inasmuch as there is no material to show that they have paid the petitioner the sum equivalent to the amount of her pay and allowances for the period of notice; interfered with the impugned order and allowed both the Writ Petitions, hence, the present Appeals.

6. Heard Mr.V.T.Gopalan, learned Senior counsel for the appellants and Mr.T.Gowthaman, learned counsel for the respondent.

7. Mr.V.T.Gopalan, learned Senior Counsel for the appellants, submitted that, in view of the Rule as it stood on the date of termination, viz., 26.08.1997, there is no obligation/compulsion to settle the pay and allowances for the period of notice simultaneously along with the order of termination. In support of the above proposition, he relied on the decision of the Supreme court reported in (2000) 10 SCC 115 (Municipal Corporation of Delhi (MCD) v. Prem Chand Gupta). He also contended that inasmuch the respondent herein is only a temporary government servant, the authorities are fully empowered to terminate her from service, and that, enquiry and affording opportunity, applicable to a permanent government servant, are not required to be adhered to in her case.

8. On the other hand, Mr.T.Gowthaman, learned counsel appearing for the respondent, contended that, in view of the fact that the respondent/writ petitioner was not paid the sum equivalent to the amount of her pay and allowances for the period of notice, the learned Judge is perfectly right in interfering with the order of termination and prays for dismissal of the Writ Appeals. In any event, according to him, even if this Court accepts the first contention of the learned Senior Counsel for the appellants, inasmuch as the learned Judge did not consider the merits or otherwise of the impugned orders, the matter may be remitted back to the learned Judge for disposal on merits.

9. We have carefully considered the relevant Rules, materials and rival contentions.

10. It is useful to refer to the order of termination dated 26.08.1997, which reads as under:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"NATIONAL POWER TRAINING INSTITUTE
A Government of India Society

No.4(a)/169/96-NPTI/HQ/2841 Dated:-26.8.97
Order of Termination of Service issued under the Proviso to Sub-rule(1) of Rule '5' of the Central Civil Services (Temporary Service) Rules, 1965.

In pursuance of the Proviso to Sub-rule (1) of Rule '5' of the Central Civil Services (Temporary Service) Rules, 1965, I, V.K.Sood, Director General, NPTI, hereby terminate forthwith the services of Smt. S.Padmavathy, Asstt. Director (Tech./Faculty) and direct that she shall be entitled to claim a sum equivalent to the amount of her pay plus allowances for the period of Notice at the same rates at which she was drawing them immediately before the termination of her service, or, as the case may be, for the period by which such notice falls short of one month.

Sd/-
(V.K.Sood)
Director General.

Smt.S.Padmavathy,
Asstt. Director (Tech./Faculty).
N.P.T.I.
RPTI, Neyveli.
---------- "

11. It is not in dispute that the respondent/writ petitioner was selected by proceedings dated 03.04.1996 to the post of Assistant Director (Tech./Faculty). The Selection Order makes it clear that the post is temporary but likely to continue. Whatever may be, it is not in dispute that, on the date of termination, she was not a permanent government servant. Rule 5(1)(a)(b) of the Central Civil Services (Temporary Service) Rules speaks about "termination of temporary service" and the same is extracted here-under:-

" 5. Termination of temporary service,--(1) (a) The services of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(b) The period of such notice shall be one month:

Provided that the services of any such government servant may be terminated forthwith and on such termination the government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

The aforesaid Rule 5 of the latter rules as amended operated from 01.05.1965. The very same rule prior to its amendment reads as under:-

" 5. Termination of temporary service.--(1) (a) The service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant;

(b) the period of such notice shall be one month:

Provided that the services of any such government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be for the period by which such notice falls short of one month."

12. In the decision reported in (2000) (10) SCC 115 (cited supra), Their Lordships of the Supreme Court considered the said Rule and concluded thus:-

"A mere look at the earlier unamended Rule 5 of the latter rules shows, as laid down by its the then unamended proviso, that services of a temporary government servant could not be terminated forthwith without payment to him of the compensation equivalent to the sum provided therein. Such offer of compensation, therefore,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> was a condition precedent to such termination prior to the amendment of the proviso to the said rule with retrospective effect by the latter amended rule, as seen above. The amended proviso to Rule 5 of the latter rules with effect from 1-5-1965 deleted the words "by payment to him" which were earlier found in the unamended proviso to Rule 5(1) of the latter rules. Instead after the word "forthwith" the words "and on such termination the government servant shall be entitled to claim" were added. Thus, what was a condition precedent under the unamended proviso to Rule 5 of the latter rules became a condition precedent. Consequently, after 1-5-1965, as per Rule 5 of the latter rules there remained no necessity for the employer while forthwith terminating the services of a temporary government servant to offer him compensation simultaneously with the termination order. Such services could be terminated forthwith and termination would immediately come into force. Payment of appropriate compensation as per the proviso to Rule 5 on or after 1-5-1965 could be effected even later on though, of course, within reasonable time thereafter. ....."

The above interpretation of the Supreme Court is an answer to the question raised in the present case. There is no dispute that proviso to Rule-5 has been amended on 1.5.1965 and the amended proviso came into effect from the said date, in and by which, the words "by payment to him" were deleted. It is clear that, after 1.5.1965, as per Rule-5 of the Rules, there is no necessity for the employer while forthwith terminating the services of a temporary government servant to offer him/her compensation simultaneously with the termination order. Though the termination order comes into force forthwith, payment of appropriate compensation in lieu of notice period could be effected even later on, no doubt, within a reasonable time thereafter. As rightly pointed out by the learned Senior Counsel for the appellants, though the learned Judge relied on the very same decision and accepted the principles enunciated thereunder, committed an error in holding that the pay and allowances for the period of notice have to be settled simultaneously along with the termination order. We are of the view that the said conclusion is not in terms of Rule-5 as interpreted by the Supreme Court in the above referred decision, accordingly, the common order, dated 22.01.2004, of the learned Judge is to be set aside.

13. Learned counsel for the respondent, by drawing our attention to the only reason assigned by the learned Judge for quashing the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

order of termination, viz., non-payment of pay and allowances in lieu of the notice period, requested this Court for remitting the matters before the leaned single Judge for consideration on merits of the impugned order.

14. Mr.V.T.Gopalan, learned Senior Counsel, vehemently objected to such course, by submitting that, since the respondent was purely in temporary service, the appellants are entitled to terminate her services without any reason by invoking Rule-5 of the Rules.

15. First of all, the impugned order of termination, dated 26.08.1997, shows that it is a termination simplicitor. No doubt, in the counter affidavit filed before the learned single Judge, the appellants herein/respondents referred to various factual details which show that the writ petitioner had furnished incorrect information in column-X with regard to her educational qualification of B.E.(Electronics and Instrumentation) Annamalai University, showing the date of entry as September, 1982 and date of leaving as June-1986 while the fact being that she passed the said examination in May 1992 from the said University as would be evident from the Provisional Certificate. It is not the case of the writ petitioner that, on the date of termination, she was a permanent government servant entitled to enquiry and other opportunities.

16. It is brought to our notice that before issuance of Government of India Official Memorandum, dated 19.05.1993; which relates to 'action against employees who are later found ineligible/unqualified for their initial recruitment'; a question arose as to whether a Government servant can be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service. In the Memorandum, the Government of India very much relied on the observation of the Supreme Court in District Collector and Chairman, Vizianagaram S.W.R.S.S. & another vs. M.T.S.Devi) (1990 (4) SLR 237), viz.,

> " 6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that the qualifications are relaxable. No Court should be a party to the perpetration of fraudulent practice. ....."

and concluded thus,

" The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government Servant, who was not qualified or eligible in terms of the recruitment rules, etc., for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary government servant, he should be discharged or his service should be terminated. If he has become permanent Government servant, an enquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965, may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

3. Such discharge, termination, removal or dismissal from service would, however, be without prejudice to the right of the Government to prosecute such Government Servants.

4. Ministries/Departments are requested to bring the above to the notice of all concerned for information and necessary action. "

7. In the light of the clarification in the form of Official Memorandum by the Government of India based on the decision of the Supreme Court, we verified the grounds raised in the affidavit filed in the Writ Petitions, particularly W.P. No.14057 of 1997. It shows that the main grievance of the petitioner is that the impugned order of termination came to be passed without giving any opportunity to her by wrongly invoking proviso to sub-rule (1) of Rule 5 of the Rules. In another paragraph, it is stated that the order of termination had been passed as a mode of punishment on the basis of the report of the 2nd respondent therein, in such circumstances, the writ petitioner should have been given opportunity to put forth her case before passing the order of termination, which is penal in nature. No other ground has been raised. In view of the undisputed fact that, on the date of termination, the writ petitioner was only in temporary service and in view of the amended Rule ie., Rule-5 of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Rules, we are satisfied that the authorities were well within their powers in terminating the service of the writ petitioner without opportunity/enquiry. It is also brought to our notice that, as on date, no amount is due to her. We have already noted that after 26.11.1997 stay of termination was not extended and from that date onwards, she was not holding the post of Assistant Director. Accordingly, we reject the request of the learned counsel for the respondent and we are satisfied that the impugned order of termination passed by the appellants is in terms of Rule-5 of the Rules. As observed earlier, we are of the view that the learned Judge has committed an error in quashing the order of termination dated 26.08.1997.

Consequently, the common order passed by the learned Judge, dated 22.01.2004, in W.P. Nos.14057 of 1997 and 6226 of 1998, is set aside and the Writ Appeals are allowed. No costs. Connected Miscellaneous Petitions are closed.

JI.

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1.The Director General of National Power Training Institute, NPTI Complex, Sector 23, Faridabad, Haryana – 121 003.

2.The Executive Director, National Power Training Institute Regional Power Training Institute Block 14/21, Neyveli-803.

+ 2 Ccs to Mr.Muthumani Doraisami, Advocate Sr.No.40171.
+ 1 Cc to Mr.S.Radha Gopalan, Advocate Sr.No.39977.

BV (CO)
RSM/7.9.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/